

## SUPREME COURT PENDING CASES

*The following appeals are fully briefed and eligible for assignment by the Supreme Court in the near future.*

THE BANK OF NEW YORK MELLON *v.* ACHYUT M. TOPE et al.,  
SC 20592

*Judicial District of New Haven*

**Foreclosure; Whether Defendant's Challenge to Plaintiff's Standing Was Improper Collateral Attack on Earlier Foreclosure Judgment; Whether Appellate Court's Judgment Can Be Affirmed on Alternative Ground That Trial Court Properly Denied Defendant's Motion to Open for Lack of Standing.** The plaintiff bank brought this action to foreclose a mortgage on certain real property located on Sherman Avenue in New Haven owned by the defendant, Achyut M. Tope. The trial court rendered a judgment of foreclosure by sale in November, 2014. The defendant subsequently filed multiple motions to open the judgment and extend the sale date, which were granted by the trial court. The trial court again entered a judgment of foreclosure by sale in November, 2016. The defendant then filed several unsuccessful motions to dismiss, in which he argued that the trial court lacked subject matter jurisdiction over the action because the plaintiff did not have standing to commence it. The defendant again challenged the plaintiff's standing and the subject matter jurisdiction of the trial court in a motion to open and stay the judgment. The trial court denied the motion, and the defendant appealed from the ruling. The Appellate Court (202 Conn. App. 540) affirmed, agreeing with the plaintiff that the appeal was an improper collateral attack on the foreclosure judgment. The Appellate Court noted that the defendant never directly challenged either foreclosure judgment. The Appellate Court found that, because the defendant did not demonstrate, or even argue, that the trial court's lack of subject matter jurisdiction is entirely obvious, he failed to rebut the presumption of the validity of the foreclosure judgment. The Appellate Court noted that the defendant did not challenge the plaintiff's standing or the trial court's jurisdiction until more than two years after filing his appearance and that three different trial court judges rejected his challenge after examining the record, considering his arguments and reviewing the documents that he submitted. The Appellate Court also found that it could not reasonably be argued that the defendant was deprived of a fair opportunity to litigate the issue of standing, as he was afforded multiple opportunities to present his arguments in full to the trial court, and that the

defendant failed to furnish any strong policy reason to allow the otherwise disfavored collateral attack on the foreclosure judgment. It accordingly “decline[d] to consider this collateral attack to the subject matter of the trial court.” The defendant filed a petition for certification to appeal, which the Supreme Court granted as to whether his challenge to the plaintiff’s standing to prosecute this action and, thus, the trial court’s subject matter jurisdiction to adjudicate the matter, was an improper collateral attack on one or more of the foreclosure judgments rendered by the trial court in favor of the plaintiff. If the answer to the first certified question is “no,” the Supreme Court will also decide whether the judgment of the Appellate Court should be affirmed on the alternative ground that the trial court properly denied the defendant’s motion to open and stay the judgment.

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ELANA GERSHON *v.* RONALD BACK, SC 20599

*Judicial District of Stamford-Norwalk*

**Dissolution of Marriage; Choice of Law; Whether New York Law is Substantive Rather Than Procedural for Choice-of-Law Purposes When Law Would Require Litigant Seeking Postjudgment Relief in Marital Dissolution Case to File Plenary Action Rather Than Motion to Open Dissolution Judgment.** The parties’ marriage was dissolved by a New York court in 2011. The dissolution judgment incorporated by reference a stipulation by the parties settling their dispute over the division of marital property, but the stipulation explicitly provided that it was not to be merged with the judgment. The stipulation also provided that all matters pertaining to the agreement were to be governed by the laws of the state of New York. The parties later moved to Connecticut, where the dissolution judgment was registered. In 2018, the plaintiff filed a motion to open the dissolution judgment in the Superior Court in the judicial district of Stamford-Norwalk, seeking to vacate the stipulation on the ground that it was obtained as a result of misrepresentations made by the defendant regarding his finances. The court dismissed the plaintiff’s motion to open for lack of subject matter jurisdiction. The court determined that, under New York law, a party to a stipulation that is incorporated, but not merged, into a dissolution judgment cannot challenge the enforceability of the stipulation by way of motion but, rather, must do so by commencement of a plenary action. Accordingly, the court concluded that it would be error for it to entertain the plaintiff’s motion to open on the merits. The plaintiff appealed from the judgment of

dismissal to the Appellate Court. The Appellate Court (201 Conn. App. 225) first concluded that the trial court had erred in determining that it lacked subject matter jurisdiction over the plaintiff's motion to open. The Appellate Court next considered whether New York substantive law nevertheless precluded the trial court from granting the relief the plaintiff requested. The plaintiff took the position that the trial court had improperly applied New York procedural law rather than Connecticut procedural law, because the rule requiring a plenary action to challenge a stipulation not merged into the dissolution judgment is procedural and not substantive. The Appellate Court disagreed and concluded that the trial court had correctly determined that, under New York's substantive law, the plaintiff was required to bring a plenary action. Accordingly, the Appellate Court held that the form of the judgment was improper, reversed the judgment of dismissal, and remanded the case with direction to render a judgment denying the motion to open. The plaintiff now appeals upon the granting of her petition for certification to appeal. The Supreme Court will decide whether the Appellate Court correctly determined that a New York law is substantive rather than procedural for choice-of-law purposes when that law would require a litigant in the parties' circumstances who is seeking to obtain postjudgment relief in a marital dissolution case to file a plenary action rather than a motion to open the dissolution judgment.

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STATE *v.* TRAVIS LANIER, SC 20620

*Judicial District of Middlesex*

**Criminal; Cross-Examination; Whether Appellate Court Properly Upheld Trial Court's Restriction of Defendant's Cross-Examination of Victim About Matters Relevant to His Motive to Fabricate His Claims.** The victim went to a bar in Middletown and encountered the defendant and an individual named Mason Moniz. The three men were acquainted with each other. They left the bar and went to the defendant's apartment, where the defendant and Moniz hit the victim, asked him about a watch that had gone missing from Moniz' apartment after the victim had visited him two weeks prior, and told the victim that they were going to go to his apartment to get money that he had told them about earlier that evening. The victim, the defendant, and Moniz then went to the victim's apartment, where the defendant took some of the victim's money and told the victim

that he would hurt the victim if the victim called the police. The victim called 911 after the defendant and Moniz left his apartment, and the defendant and Moniz were subsequently apprehended by the police. The defendant was arrested and charged with, *inter alia*, burglary in the second degree. Before trial, the defendant filed a motion in limine requesting that he be allowed to introduce impeachment evidence related to the fact that the victim was on probation at all relevant times in connection with a prior conviction of operating a motor vehicle while under the influence. The trial court held that the defendant could ask the victim if he had a prior felony conviction and if he was presently on probation but could not ask if the victim had violated his probation, and if so, how. During trial, before his cross-examination of the victim, the defendant asked the trial court if he could question the victim about the conditions of his probation and the victim's understanding thereof. The defendant argued that his proposed line of questioning was relevant to the victim's state of mind and whether he had motive, bias, or interest to fabricate the incident if he believed that his probationary status would be affected by the amount of alcohol that he consumed on the night of the incident or the allegation that he had stolen Moniz' watch. The trial court reiterated its prior ruling, noting that it went beyond what was required by the applicable rules of evidence, and determined that any questioning regarding any potential actual or perceived violation of the victim's probation would be speculative and more prejudicial than probative. The defendant was found guilty and convicted of the burglary charge, and he appealed to the Appellate Court (205 Conn. App. 586), claiming in relevant part that the trial court violated his sixth amendment rights to confrontation and to present a defense by precluding his proposed line of questioning. The Appellate Court disagreed, concluding that the trial court had allowed the defendant to engage in questioning that went beyond what was required for sixth amendment purposes and had correctly characterized the defendant's proposed line of questioning as overly prejudicial and speculative. It further concluded that the defendant had nonetheless been able to undertake an "extensive and robust cross-examination of the victim." The Appellate Court ultimately affirmed the judgment of conviction. In this certified appeal, the Supreme Court will decide whether the Appellate Court properly upheld the trial court's restriction of the defendant's cross-examination of the victim about matters relevant to his motive to fabricate the claims.

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THE RESERVE REALTY, LLC, ET AL. *v.* WINDEMERE  
RESERVE, LLC, ET AL., SC 20635

THE RESERVE REALTY, LLC, ET AL. *v.* BLT  
RESERVE, LLC, ET AL., SC 20636

THE RESERVE REALTY, LLC, ET AL. *v.* WINDEMERE  
RESERVE, LLC, ET AL., SC 20637  
*Judicial District of Danbury*

**Contracts: Construction; Whether Commercial Real Estate Brokerage Agreements Were Unenforceable for Failure to Satisfy Requirement in General Statutes § 20-325a (c) that Any Such Agreements State “Duration of the Authorization” Contained Therein; Whether Agreements Were Personal Services Contracts with Deceased Party.** The plaintiff The Reserve Realty, LLC (Reserve Realty), is a real estate brokerage company cofounded by Jeanette Haddad. In 2003, the defendants, Windemere Reserve, LLC, and BLT Reserve, LLC (BLT), purchased parcels of undeveloped land and entered into listing agreements with Jeanette Haddad granting her the exclusive right to offer for sale or lease any units built on the parcels. Pursuant to the contract terms, the agreements were to be effective for a period of ten years from the date of the first conveyance of an individual unit or executed lease. Jeanette Haddad subsequently made good faith efforts to find prospective buyers or lessees for the parcels until mid-2007. In 2011, BLT obtained planning permission to construct a rental apartment complex on one of the parcels and subsequently began leasing units therein through its own on-site leasing agent. Shortly after the death of Jeanette Haddad in 2013, her son learned of the apartment complex and contacted the defendants to determine whether they intended to honor the listing agreements. After the defendants refused to discuss the matter, Reserve Realty and the plaintiff Theodore Haddad, Sr., as executor of the estate of Jeanette Haddad, brought the present action alleging, inter alia, breach and anticipatory breach of the listing agreements and seeking damages for commissions allegedly owed for present and future rentals of the apartment units and soon-to-be constructed office space. The trial court rendered judgment in favor of the defendants, concluding, in relevant part, that the listing agreements (1) did not satisfy the requirement in General Statutes § 20-325a (c) that such agreements state “the duration of the authorization” contained therein and (2) were personal service contracts with Jeanette Haddad. The Appellate Court (205 Conn. App. 299) affirmed the trial court’s judgment, concluding that the indefinite duration of the listing agreements failed to strictly or

substantially comply with the plain meaning of § 20-325a (c). The plaintiffs now appeal to the Supreme Court following the granting of their petition for certification to appeal. The Supreme Court will decide whether (1) the Appellate Court correctly determined that the listing agreements were unenforceable because they failed to satisfy the requirement in § 20-325a (c) that any such agreements state “the duration of the authorization” contained therein and (2) the trial court correctly determined that the listing agreements were contracts for the personal services of Jeanette Haddad such that the defendants could not be held liable for any commissions even if the agreements had been enforceable by Jeanette Haddad during her lifetime.

*The summaries appearing here are not intended to represent a comprehensive statement of the facts of the case, nor an exhaustive inventory of issues raised on appeal. These summaries are prepared by the Staff Attorneys’ Office for the convenience of the bar. They in no way indicate the Supreme Court’s view of the factual or legal aspects of the appeal.*

*Jessie Opinion  
Chief Staff Attorney*

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